

Practice Notes

Filing Page Proof Copies Prohibited; Notice of New References in Cross-Appellee's Reply Brief. Preparing the appendix requires extensive cooperation between the parties. Federal Circuit Rule 30, unlike Federal rule of Appellate Procedure 30, does not permit filing page proof copies of briefs. An appendix prepared without careful attention to Federal Circuit Rule 30 may be rejected when submitted and may result in dismissal. To expedite preparing the joint appendix, a cross-appellant will notify the appellant, promptly on being served appellant's reply brief, whether the cross-appellant will file a reply brief and, if so, whether it will refer to pages not referenced in the briefs already, listing any such pages.

Dispensing with the Appendix. A motion to dispense with the appendix will be granted only in extraordinary circumstances.

Briefs and Memoranda. Briefs and memoranda presented to the trial court or agency may not ordinarily be included in the appendix, but individual pages may be included when it is necessary to refer to them in the appellate briefs.

Table of Contents or Index. Parties are encouraged to include a table or contents or index in each volume of the appendix.

Rule 31. Serving and Filing Briefs

(a) Time to Serve and File a Brief.

- (1) The appellant must serve and file a brief ~~within 40 days after the record is filed~~. The appellee must serve and file a brief ~~within 30 days~~ after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.
- (2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) Number of Copies. ~~Twenty-five~~ copies of each brief must be filed with the clerk and 2 copies must be served on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

Rule 31. Serving and Filing Briefs

(a) Time for Service and Filing.

(1) Brief of Appellant or Petitioner.

- (A) In an appeal from a court, the appellant must serve and file its initial brief within 60 days after docketing. Docketing a cross-appeal does not affect the time for serving and filing the appellant's initial brief.
- (B) In an appeal from an agency, the appellant must serve and file its initial brief within 60 days after the certified list or index is served pursuant to Federal Circuit Rule 17(c) or within 60 days after docketing, whichever is later.
- (C) When two or more persons are permitted to proceed as a single appellant, the initial brief must be served and filed no later than the latest date on which the initial brief of any of these persons is due.

(2) Brief of Appellee or Cross-Appellant. The appellee or cross-appellant must serve and file its initial brief within 40 days after appellant's brief is served.

(3) Cross-Appeal. In a cross-appeal:

- (A) the appellant must serve and file its reply brief within 40 days after cross-appellant's brief is served; and
- (B) the cross-appellant must serve and file its reply brief within 14 days after appellant's reply brief is served.

(4) Single Brief Responding to Multiple Parties. A single brief that responds to the briefs of multiple parties must be served and filed within the time prescribed after service of the last of these briefs or,

if no such brief is filed, after the time expires for filing the last of these briefs.

(5) **Reply Brief; Oral Argument.** A reply brief that is filed within 4 business days of oral argument must be served so that it reaches all parties before the argument.

(b) **Number of Copies.** Except for briefs containing material subject to a protective order (see Federal Circuit Rule 28(d)), 12 copies of each brief, including the original or a copy designated as the original, must be filed with the court and 2 copies must be served on the principal counsel for each party, intervenor, and amicus curiae separately represented.

(c) **Certain Motions Suspend the Due Date of the Next Brief.** When a motion is filed that, if granted, would terminate the appeal, the time to serve and file the next brief due is suspended. If the motion is denied, the next brief becomes due, unless the court orders otherwise, within the balance of the time remaining under this rule when the motion was filed, but not fewer than 10 days from the date of the order.

(d) **Consequence of Failure to File a Brief by Appellant or Petitioner.** If the appellant fails to file an initial brief, the clerk is authorized to dismiss the case.

(e) **Informal Brief; Time for Filing; Number of Copies.**

(1) **Appellant's Brief.**

(A) In an appeal from a court, a pro se appellant filing an informal brief must serve and file the brief within 21 days after the appeal is docketed.

(B) In a petition for review or an appeal from an agency, a pro se appellant filing an informal brief must serve and file the brief within 21 days after the certified list or index is served pursuant to Federal Circuit Rule 17(c) or within 21 days after docketing, whichever is later.

(2) **Appellee's Brief.** An appellee filing an informal brief must serve and file the brief within 21 days after appellant's brief is served or within 21 days after the certified list or index is served pursuant to Federal Circuit Rule 17(c) or within 21 days after docketing, whichever is later.

(3) **Reply Brief.** When an informal brief is used, any reply brief must be in letter form and no longer than 5 double-spaced typewritten pages, and must be served within 10 days after appellee's brief is served.

- (4) **Number of Copies.** An original and 3 copies of each informal brief must be filed with the court and one copy must be served on each party.

Practice Notes

Reply Briefs Due at Least 3 Days Before Oral Argument; Expedited Service. The reply brief of the appellant (or cross-appellant in a cross-appeal) is due to be served and filed within 14 days of the preceding brief. The 3-day provision of Federal Rule of Appellate Procedure 31(a)(1) means that the reply period is automatically shortened if the end of the 14-day period is within 3 days of oral argument. The briefing schedule will not ordinarily run so close to oral argument, but if it does - because of extensions or otherwise - the reply brief must be filed early. Federal Circuit Rule 31(a)(5) provides that when that happens, a reply brief filed within 4 business days of oral argument must be filed and served in an expedited manner. Regular mail would be inappropriate.

Consolidated Appeals. In consolidated appeals in which more than one appellant filed a notice of appeal, the opening brief of all appellants will be governed by the docketing date of the last filed appeal.

Consolidated Cross-Appeals. In consolidated cross-appeals, the briefing schedule is computed according to the docketing date of the first appeal.

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Form of a Brief.

(1) Reproduction.

- (A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.
- (B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.
- (C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; and any reply brief, gray. The front cover of a brief must contain:

- (A) the number of the case centered at the top;
- (B) the name of the court;
- (C) the title of the case (see Rule 12(a));
- (D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Nonconforming Brief. The clerk may refuse to file any brief that has not been printed or bound in conformity with Federal Rule of Appellate Procedure 32.

(b) Exclusion from Type-Volume Limitation. In addition to the items listed in Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) that are not counted in the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B), the following items do not count toward that limitation:

- (1) the certificate of interest;
- (2) the statement of related cases; and
- (3) the addendum in an initial brief of an appellant or petitioner.

(c) Informal Brief. An informal brief must be prepared on a form provided by the clerk. The form contains instructions for preparing and filing an informal brief. An informal brief should be typewritten, but block printing or, as a last resort, legible handwriting is permitted. An informal brief including continuation pages must not exceed 30 pages of typewritten double-spaced text or its equivalent.

(d) Form of Appendix. Pages in an appendix - even when filing a combined brief and appendix - may be printed on both sides. To the extent possible, the court encourages this.